UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1345
12 August 1999

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1345th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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GE.99-43738 (E)

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ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fourteenth periodic report of Iraq (continued) (CERD/C/320/Add.3)

1. At the invitation of the Chairman, the members of the delegation of Iraq resumed their places at the Committee table.

2. Mr. YOUSSIF (Iraq) underscored the importance attached by Iraq to the ongoing constructive dialogue pursued on the basis of legal rather than other grounds, with a view to reaching a common understanding of the best means of implementing the Convention.

3. Turning to the questions and comments put forward by the Country Rapporteur, he said that the reason the report included references to the reports submitted by Iraq to other human rights bodies was that article 5 of the Convention laid down the principle of non-discrimination in the observance of economic, social and cultural rights and civil and political rights, and Iraq, as a State party to the two International Covenants, had always reported on non-discrimination in the implementation of those rights. Other countries, too, had referred in their reports to those submitted to the various treaty bodies in an effort to avoid the repetition of information. Indeed, that practice had been encouraged by meetings of the persons chairing human rights treaty bodies.

4. The Iraqi Government had consistently called for a national dialogue with the various Kurdish factions so as to restore peace and security in the Autonomous Region, while at the same time safeguarding human rights and respecting the territorial integrity of the Iraqi State. The national dialogue had progressed significantly in the past, with documents ready for signature, but those efforts had been thwarted because of interference by certain foreign powers, in particular the United States of America.

5. In its concluding observations on the eleventh to thirteenth periodic reports, the Committee had welcomed national legislation devoted to the protection of the cultural identity and languages of national minorities in Iraq as a positive aspect. He further referred the Committee to paragraphs 80 to 92 of the fourteenth periodic report, which spelled out the cultural rights enjoyed by the Turkoman and Syriac-speaking communities.

6. Paragraphs 45 to 50 and 93 and 94 of the fourteenth periodic report explained the situation of the inhabitants of the Marshes.

7. All Iraqis enjoyed freedom of movement and the freedom to choose their place of residence anywhere in the country.

8. Concerning the question of Kuwaitis reportedly living in Iraq, article 1, paragraph 2, of the Convention stipulated that its provisions did not apply to discrimination between citizens and non-citizens. The matter therefore did not fall within the competence of the Committee. The question of Kuwaiti missing persons was covered by the relevant Geneva Conventions and

was the subject of work being done by a tripartite committee composed of representatives of Iraq, Kuwait and Saudi Arabia and allied States, under the auspices of the International Committee of the Red Cross. For humanitarian reasons, Iraq was keen to establish the whereabouts of all persons, including Iraqis in Kuwait, who had gone missing as a result of the armed conflict.

9. Regarding the situation in Iraq of Kurdish refugees from Turkey and Iran and of Iranian Arab refugees, and the possibility for Iraqi refugees in Europe to return to their country, he said that, although the question of refugees did not fall within the competence of the Committee either, the delegation could provide some information in the interests of constructive dialogue. There were a number of camps in Iraq for Kurds and Iranian Arabs, and they were periodically visited by the Office of the United Nations High Commissioner for Refugees (UNHCR). Iraq had done its utmost to assist those refugees in returning home or to find host countries for resettlement, as attested in UNHCR documents. As to Iraqi refugees living in Europe, many of them had been forced by economic difficulties brought on by the 10-year economic embargo to leave their country. Nothing was stopping them from returning.

10. With regard to alleged human rights violations in the northern Autonomous Region, he said that in the absence of control by a central authority, and as a result of the foreign military intervention there, the Autonomous Region had become the scene of armed conflict between factions and very serious violations of human rights. The Turkish military intervention in northern Iraq had resulted in still more tension and problems.

11. Replying to questions by other Committee members, he said that the periodic reports had already mentioned constitutional and legislative texts pertaining to the participation of Kurds in the central Government. The Vice-President of the Republic and a number of government ministers were from the northern Autonomous Region, and the chairmen of the Legislative and Executive Councils in the Autonomous Region took part in ministerial cabinet meetings. The Vice-President of the Iraqi National Council, too, was a Kurd. Many Kurdish citizens held high-ranking posts as judges, ambassadors and directors in the public service.

12. His Government did not believe that articles 200, 203 and 204 of the Penal Code were at variance with the Convention. It hoped, in a spirit of dialogue, that the Committee members could explain why some had contended that those articles needed to be amended to bring them in line with article 4, and perhaps propose possible formulas for such amendments.

13. The reason why property ownership in Baghdad was limited to those people who figured as inhabitants of the city in the 1957 census and to their children was that the Government wanted to maintain the demographic balance and to forestall a rural exodus to the capital. That measure covered all citizens, without any discrimination based on race.

14. Paragraph 48 of the periodic report gave details of the distribution of agricultural land in the Marshes region.

15. The provisions of the Convention had been published in the official gazette, the title of which was Iraqi Chronicles and which was widely read by administrative and judicial authorities. An advisory committee on human rights had published the Convention along with all human rights instruments ratified by Iraq, and other human rights organizations, too, had publicized the Convention.

16. Education was compulsory at the primary level, and was free of charge. Because Iraq was a party to the Convention against Discrimination in Education, all schools had the same State curriculum, regardless of the ethnic origin or race of the pupils and students who attended them. In addition, certain additional language rights were ensured for Kurdish, Syriac and Turkoman schools.

17. A question had been raised about the respective property rights of men and women. Iraqi legislation was based on Islamic law, and made provision for the independent financial status of both married and single women. Women were thus entitled to establish their own businesses. He referred members to Iraq's first periodic report to the Committee on the Elimination of Discrimination against Women, to which his country reported regularly.

18. Any victim of racial discrimination had the right to file a complaint if an act was committed that contravened articles 200, 203 or 204 of the Penal Code, and the judge was obliged to receive it and refer it to a competent court. The complainant would then be able to pursue the matter and prosecute the legal or natural person, public official or private individual who was in breach of the law. If a public official discriminated against a person, the victim could theoretically request compensation from the State. In practice, the Iraqi delegation was not aware of any such cases, but it would look into the matter and keep the Committee informed.

19. The idea of deploying human rights observers in Iraq raised the question of the credibility of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, who had not been objective, had not engaged in a dialogue with the Government and had departed from the guidelines of the General Assembly, according to which thematic and country special rapporteurs were obliged to comply with international law and to respect the territorial integrity, national unity and political system of the countries they examined. The Special Rapporteur had instead chosen an approach based on politicization and condemnation, and had made proposals which by his own account were without precedent in United Nations practice. The idea of sending human rights observers had been put to the Commission on Human Rights as a rationalization measure, and had been rejected by a large number of States.

20. Some of the Committee members had misunderstood paragraph 107 of the fourteenth periodic report, which was not intended to address the work and practices of the Committee or other United Nations bodies, but those of certain Western countries. In defiance of the Charter of the United Nations which prohibited interference in the affairs of sovereign States, those countries had interfered in the internal affairs of Iraq under the pretext of defending minority rights and human rights. The Iraqi Government was in

favour of carrying on a dialogue to promote, reinforce and ensure human rights in accordance with its treaty obligations.

21. Foreigners in Iraq enjoyed full economic, social and cultural rights, provided they resided legally in the country.

22. The Chairman had asked about the approximately 3 million Egyptians who had lived and worked in Iraq, contributing to the development of the country, since the 1970s. Some still resided there, but many had left since 1990 as a result of the economic embargo and the aggression.

23. The Special Rapporteur had indeed alleged that forced deportations had occurred in the Kirkuk Governorate, and the Iraqi Government had already refuted those allegations in a letter to the General Assembly dated 14 November 1997 (A/C.3/52/7) and in a previous letter sent to the General Assembly in 1994 (A/49/394). During the war between Iran and Iraq some families had been resettled for their own safety from the border regions near Kirkuk and Khanaqin to areas further from the combat zone, but they had received compensation in accordance with the law.

24. Funds for Kurdistan were, under article 8 of the Autonomy Act of 1974, derived from two sources: the national budget and the National Development Plan, and the Kurdistan regional budget, which included the revenue from the taxes, fees, duties and fines indicated in the report (para. 59 (a)). On the related question of control over Kurdistan's mineral and water resources, they, like all other natural resources, belonged to the people as a whole and were administered by the central Government of Iraq for the benefit of all the people. Thus, the Autonomous Region had benefited proportionately from the resources in its own territory.

25. He observed that the delegation had come in a spirit of dialogue, and that it hoped the Committee had taken cognizance of the two major obstacles Iraq was facing, namely, the continued embargo, whose impact was tantamount to genocide, and the aggression through daily bombardments with depleted uranium weapons, whose dangerous consequences would extend to future generations as well.

26. Mr. HUSSAIN (Iraq), referring the Committee to the annexes to the report, said that for the period 1970-1990 the Autonomous Region had had a budget of 22 billion dollars, or 9 per cent of the total national appropriation for development. It had been used in part to fund major petrochemical and phosphate mining projects in the region and was an equitable sum for Kurdistan's development.

27. Mr. GARVALOV observed that, out of the five States in the region that had a Kurdish minority, Iraq had been the only one to enact legislation that gave the Kurds - for whatever reason - the degree of autonomy that they enjoyed. One of the four other States did not even recognize the Kurds as a minority, and Iraq had gone much further than the others in recognizing them.

28. Although the Convention had been incorporated into Iraqi legislation and could therefore be directly invoked in the courts, there appeared to be some misconceptions in the Government's understanding of certain articles.

Paragraph 9 of the report, for instance, seemed to interpret article 2 as prohibiting discrimination on grounds of social class; social class, however, was not synonymous with ethnic group or religious group. Under article 2, and also under articles 1, 4, 5 and 7, Iraq was required to prohibit discrimination on specifically ethnic or racial grounds in its own legislation, including the Penal Code. Similarly, there was a discrepancy between what the report considered to be compliance with article 4 of the Convention and what the article itself said, specifically article 4 (a): the propagation of "feelings of hatred among sections of the people" (report, para. 15) could just as easily be based on class as on race or ethnicity, and its prohibition did not fulfil the requirements of the Convention.

29. Mr. WOLFRUM, underscoring the delegation's proper understanding of the prohibition of racial discrimination in terms of jus cogens, said that he agreed with Mr. Garvalov that the legal regime governing the Kurds in Iran was far superior to that in neighbouring States, and was in fact an excellent regime per se.

30. Although he understood the thinking behind the acquisition of real estate by the central Government, some of his doubts had not been dispelled.

31. In addition to the information provided on the government posts held by Kurds and other minorities in the executive branch, he would at a later time appreciate details on their numbers in the police force, the judiciary and the legislature. He also would like to know whether the Government, which ensured that the Kurds could be educated in their own language, had taken care to ensure that they properly learned the language of the nation as well. No minority had a right to exclude itself from the life of the country as a whole, thus marginalizing itself.

32. Mrs. SADIQ ALI observed that Iraq, once cited by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for its literacy campaigns and once a country that had provided free education up to the highest levels, was, under the impact of the sanctions, suffering from a lack of textbooks and materials. The strain on educational facilities might soon begin to affect enrolment as well. Iraqi youth had been left behind - by a decade - in the field of science and technology. The Committee should make a statement taking serious note of that deplorable situation, under article 7 of the Convention.

33. Mr. de GOUTTES, expressing appreciation for the interesting information provided, especially on the laws governing ethnic groups, said that he would still like to know how the Government was planning to publicize the conclusions and recommendations of the Committee in connection with the current and future reports of Iraq; and what measures it had taken or would take to develop training in human rights, tolerance and inter-ethnic understanding for the police and security forces and for the judiciary, as recommended in the Committee's general recommendation on the matter.

34. Mr. DIACONU (Country Rapporteur) said that he believed the Committee had been given a good picture of the prevailing situation. He wished to make the point, however, that if the Committee itself dealt with questions that came within the jurisdiction of other treaty bodies, it was not trying to extend

its own competence but to see those issues from its own specific angle of racial discrimination; and that it had a right to do so. He also wished to explain that he did not consider that Iraq's Penal Code was contrary to article 4 of the Convention but simply that it did not go far enough. That was the case in most other countries as well, but the Committee had to insist on full compliance. It should be clear to any jurist, for instance, that incitement to racial hatred was much broader than incitement to intercommunal bigotry. He looked forward to receiving fuller information in the next report and to a continued regular dialogue between Iraq and the Committee.

35. Mr. YOUSSIF (Iraq) said that the Penal Code articles cited, even if perhaps not as broad as article 4 of the Convention, certainly covered many of the same points. Intercommunal conflict, for instance, often springing from racial tensions, was an obstacle to national unity that could easily lead to the kind of civil wars that other countries were experiencing.

36. Under the Autonomy Act, education in Kurdistan was provided to Kurds and Arabs in their own language, and the same applied to minorities living in other regions. All, however, also learned the national language. Exceptional circumstances had obliged Iraq to suspend its literacy campaigns, but the delegation appreciated Mrs. Sadiq Ali's recognition of the usual quality of education in Iraq and hoped that the Committee would act on her proposal. The Government already provided courses in human rights for law enforcement officers, and the Committee's concluding observations on the report of Iraq would be published in the press and be brought to the attention of the competent officials.

37. Mr. HUSSAIN (Iraq) said that Iraq recognized the rights of all social groups, whether Kurds, Turkomans, Chaldeans, Armenians or any others, and also of all religious denominations. All were free to worship as they wished and all minorities, however small, could exercise their rights. He agreed fully with Mr. Wolfrum about the teaching of the main national language to minorities. It should be noted, however, that Kurdish was also taught in high schools throughout the country. The grave deterioration of education since the embargo was a sad fact, and he urged the Committee to make a statement on it. Iraq continued to do everything possible to promote education, which was still free.

38. Iraqi law prohibited the propagation of feelings of hatred among sections of the people because such hatred was the first step towards outright discrimination and even armed conflict, and had to be tackled at the earliest stage. The Government wanted to preserve the unity and harmony of the mosaic of ethnic groups and religious communities that was Iraq and therefore also outlawed intercommunal bigotry.

39. Regarding the respective mandates of the Committee and the other human rights treaty bodies, there had of course to be a certain leeway for the Committee to address matters that also fell within the purview of other committees. There were times, however, when it could be said that certain subjects were primarily the concern of the other committees and that members of the Committee should not try to twist the interpretation of the Convention in senses that were beyond its scope.

40. The CHAIRMAN said that he believed that, by continuing their dialogue, the Committee would be able to convince the delegation that it was not going beyond its mandate if it looked for discrimination on racial grounds in any area whatsoever, such as the treatment of refugees, children or prisoners, equality between men and women, or any other. Mr. Diaconu had expressed the Committee's point of view, which was a matter of great importance to all its members. The Committee in turn would, of course, bear in mind the two major difficulties in Iraq, the aggression and the embargo. The Committee had always expressed itself forcefully on such issues and indeed had been one of the first to do so.

41. Mr. YOUSSIF (Iraq) said that his delegation was confident of the Committee's concern, at all times, to fulfil its mandate objectively, and recognized the Committee's primary role in its field. It was gratified, too, that the language of dialogue had prevailed. It hoped that the annexes to its report could appear as an addendum, and that a version in Arabic, already available, would also be circulated.

42. The CHAIRMAN invited the Iraqi delegation to contact the secretariat about the distribution of the text in Arabic. He noted that, although Arabic had not always been an official language of the United Nations, Iraq had been able to submit its eleventh, twelfth and thirteenth periodic reports in that language. He reiterated the Committee's appreciation of the Iraqi delegation's attendance and collaboration.

43. The members of the delegation of Iraq withdrew.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 8) (CERD/C/368; CERD/C/55/Misc.28)

44. The CHAIRMAN drew the Committee's attention to the note by the Secretary-General (CERD/C/368) concerning article 15 of the Convention, and to the working paper (CERD/C/55/Misc.28) prepared by Mr. van Boven, who had again been appointed to examine relevant documents made available to the Committee.

45. Mr. van BOVEN, referring to the working paper (CERD/C/55/Misc.28), said that no copies had been received of petitions directly related to the principles and objectives of the Convention pursuant to article 15, paragraph 2 (a). In that connection, he recalled the Committee's opinions and recommendations, set out in paragraph 493 of its report to the General Assembly at its fifty-third session (A/53/18), including its request to the Secretary-General to provide it with copies of petitions and any other information relevant to the objectives of the Convention and available to him regarding the Territories mentioned in article 15, paragraph 2 (a), and inviting the Special Committee of 24, when devising its future work, to give more systematic attention, in particular, to matters directly related to the principles and objectives of the Convention. In addition, States parties administering Non-Self-Governing Territories or otherwise exercising jurisdiction over Territories were requested to include or continue to include, in their reports to be submitted pursuant to article 9, paragraph 1,

of the Convention, relevant information about the implementation of the Convention in all Territories under their jurisdiction. He suggested that the Committee should reiterate those opinions and recommendations, with slight modification in the light of the reply by the Secretary of the Special Committee relating to petitions pursuant to article 15, paragraph 2 (a), of the Convention.

46. No copies of petitions relating to article 15, paragraph 2 (a) had been received. With regard to article 15, paragraph 2 (b), he drew attention to paragraph 2 of the working paper, in particular to the material relating to East Timor, New Caledonia and Western Sahara. Most of the material was out of date because of events such as the planned referendum about the future status of East Timor, a foreseen referendum for self-determination of the people of Western Sahara and, of immediate interest to the Committee, the Nouméa Accord, signed on 5 May 1998, on the future status of New Caledonia, which purported to give full recognition of the Kanak identity, regarding which an extensive document on the Kanak identity was attached to the Accord - in his view a welcome inclusion. That event had been the major development, during the past year, relating to Territories to which General Assembly resolution 1514 (XV) applied.

47. As could be seen from paragraph 3 of the working paper, concerning relations with the Special Committee of 24, the Secretary of the latter body had stated that there had been no petitions relating to article 15, paragraph 2 (a) of the Convention. No communication had been received about material relating to article 15, paragraph 2 (b), probably because the Special Committee's 1998 session had already concluded before the Committee had drawn up its opinions and recommendations in August 1998.

48. The CHAIRMAN thanked Mr. van Boven, on behalf of the Committee, for the working paper and further information provided. He found it disquieting for the Committee to be told that no petitions or other material relating to article 15 of the Convention had been received, since he was aware, from what he had learned while attending meetings of persons chairing the human rights treaty bodies, that thousands of petitions remained without attention because of shortage of personnel and funds. He was concerned, too, about the lack of material from non-governmental organizations (NGOs) relating to Non-Self-Governing Territories; he would welcome such material, addressed either to himself or to Mr. van Boven.

49. He took it that the Committee wished to invite Mr. van Boven to draft a brief document reiterating the Committee's opinions and recommendations, including a particular appeal for any relevant information relating to Non-Self-Governing Territories, even if the subject-matter might seem appropriately covered by article 9 of the Convention.

50. It was so decided.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (agenda item 6)

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

51. Mr. BANTON briefly reviewed, at the invitation of the Chairman, the proceedings of the Third Committee of the General Assembly relating to the annual report submitted by the Committee. Regrettably, the debate had been combined with discussion of the reports of other bodies, as in previous sessions, and with preparations for the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In addition, certain delegations had taken up time in raising political issues such as Kashmir, Israel, Eritrea and Ethiopia. The resolutions adopted by the General Assembly had focused, as in the past, on two main causes of racial discrimination: colonialism and the dissemination of ideas of racial superiority, both condemned in the preamble to the Convention. Further causes, however, had been noted in resolution 53/132 adopted relating to the Third Decade to Combat Racism and Racial Discrimination; they included globalization, inequitable distribution of wealth, marginalization and social exclusion. And mention had been made for the first time, in resolution 53/133 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, of racist and xenophobic ideas in political circles.

52. During the debates, Mr. Valencia Rodriguez had effectively put forward the Committee's views, and had expressed regret that the Committee's report had been circulated to the participants very late. One significant contribution to the discussions had come from the representative of the Democratic Republic of the Congo; a text had been made available and could perhaps be discussed when the Committee came to consider that country's periodic report later in the current session.

53. Mr. VALENCIA RODRIGUEZ said that, at the Committee's request, he had taken part in the Third Committee's debate on racism and racial discrimination at the previous session of the General Assembly, in his capacity as representative of Ecuador. He had outlined the Committee's main concerns, as expressed in its report (A/53/18), and particularly its decisions 7 (53) and 8 (53) on the need to extend one of its sessions and to hold its winter session in New York.

54. Resolutions in the Third Committee were now adopted by consensus, a prerequisite for which were informal discussions and negotiations in the various groups. He had, accordingly, taken an active part in the discussion relating to CERD's work by the Group of 77 and China, the first of the groups to consider the draft resolution. The first draft of the resolution had merely taken note of the Committee's decisions 7 (53) and 8 (53). Participants had not been in favour of according the Committee a longer session, arguing that it was up to date with its own work, nor of allowing it to meet in New York, since the Office of the United Nations High Commissioner for Human Rights was in Geneva. His delegation had considered submitting an amendment to the effect that the General Assembly endorsed the two decisions, but, given the strong opposition, that would certainly have prompted a vote

and sharply divided the Third Committee. A compromise had been suggested, whereby the Committee's summer session would be extended by five working days in 1999 and 2000 and the General Assembly would reconsider the length of sessions and the possible holding of a session in New York at its fifty-fifth Session in 2000. After further consultations, it had emerged that no further concessions could be made and Ecuador had accordingly withdrawn its sponsorship of the draft resolution. The draft resolution was eventually adopted as General Assembly resolution A/53/131 entitled "International Convention on the Elimination of All Forms of Racial Discrimination", with 50 sponsors, among them Argentina, Bulgaria, Cyprus, France, Germany, Netherlands, Pakistan, Romania, Sweden and the United Kingdom. Egypt and Algeria had spoken in explanation of vote before the voting, and Turkey, the United States of America and Ecuador after the voting.

55. He had been particularly anxious to amend the original draft of operative paragraphs 2, 3, 4 and 6, of which the final version was before the Committee. The original version of operative paragraph 5 had commended the Committee on its constant efforts for the effective implementation of international human rights instruments by means of continual improvements in its working methods, especially its procedure for reviewing the implementation of the Convention in those States whose reports are excessibly overdue. Slovenia, on behalf of the sponsors, had revised the text and a vote had in fact been taken, showing that there was still opposition. The adopted version read: "Commends the Committee on its continuing efforts to contribute to the effective implementation of the Convention and notes its continuing efforts to improve its working methods". Paragraphs 18 and 20 had also been changed as a result of the efforts made to improve the text.

56. The CHAIRMAN thanked Mr. Banton and Mr. Valencia Rodriguez for their explanations and suggested that the Committee should return to the issue at a later meeting.

The meeting rose at 1.05 p.m.

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Distr.
GENERAL

CERD/C/SR.1346
15 November 1999

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1346th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eleventh, twelfth, thirteenth and fourteenth periodic reports of Chile

This record is subject to correction.

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GE.99-43747 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh, twelfth, thirteenth and fourteenth periodic reports of Chile (CERD/C/337/Add.2; HRI/CORE/1/Add.103)

1. At the invitation of the Chairman, Mr. Salinas, Mr. Labbe, Mrs. Aravena and Mrs. Bertoni (Chile) took places at the Committee table.

2. Mr. SALINAS (Chile) said that the first part of his Government's periodic report on the implementation of the Convention, which was the first to be submitted to the Committee since 1992, stated that the Europeans who settled in the territories of the indigenous populations during the colonial era established a system of discrimination based on race, origin, customs and colour and a society based on marginalization and segregation to the detriment of the indigenous inhabitants. At the end of the nineteenth century, the "pacification" policy was supplemented by assimilation measures that involved confiscation of the lands of the indigenous inhabitants, who were confined in reservations, and the resulting land ownership system sometimes gave rise to conflicts.

3. In order to rectify that situation and combat discrimination against the indigenous inhabitants in accordance with its obligations under the Convention, the Chilean Government had taken a number of important measures, including the Indigenous Act of 1993. That Act, which was inspired by article 2 of the Convention, stipulated that the Chilean State had an obligation to ensure the protection and advancement of the indigenous inhabitants and recognize the existence of the Mapuche and other ethnic groups such as the Aymaras, the Quechuas, the Cunsas or Atacameños, the Collas, the Rapa Nui, the Kawashkars or Alacalufes and the Yámanis or Yaganes. It further stipulated that those groups should be taken into account in the population censuses and recognized the existence of the indigenous communities as family and local entities possessing a common territory and led by a traditional chief. Between 1994 and 1999, 1,554 communities and 372 indigenous associations were officially registered in the country under the terms of that Act.

4. In accordance with the provisions of articles 2 and 6 of the Convention, the Indigenous Act recognized the right of the indigenous inhabitants to organize their own cultural activities and, in article 8, prescribed penalties for any discrimination against those groups on grounds of their origin or their culture. Under the terms of that article, nine cases were brought before the National Indigenous Development Corporation (CONADI), which settled them through amicable arrangements. With regard to land ownership, the Act acknowledged that the State had an obligation to ensure that the lands of the indigenous inhabitants were used in a proper manner, without ecological damage, and made provision for a full protection and development system for the indigenous communities. The aim of the Indigenous Lands and Waters Fund, for example, was to help the indigenous communities to purchase or recover land. About 20,300 indigenous families, i.e. some 100,000 persons, had benefited from the aid provided by that Fund. The Act had also established an

Indigenous Development Fund, administered by CONADI, for the purpose of financing special programmes for the benefit of indigenous communities and their members through investment, management and institutional consolidation activities. Finally, three indigenous development zones, endowed with special status, had been established in which self-management was being promoted and two further zones were to be established in the near future.

5. Other provisions of the Act concerned the cultural development of the indigenous communities, mainly through a bilingual, cross-cultural training programme and a scholarship programme. Indigenous inhabitants had already been awarded 48,200 scholarships. Between 1994 and 1998, the Government had funded 29 bilingual teaching programmes and supported the establishment of 23 inter-ethnic kindergartens. Eight studies of vernacular languages, of three alphabets and of grammars had been undertaken in order to make it easier to learn the Mapuche, Aymara and Rapa Nui languages and the foundations of a bilingual, cross-cultural teaching policy had been laid in collaboration with the Ministry of Education.

6. During and after the period covered by the report, the Chilean Government had adopted a series of special measures designed to protect the Kawashkar (101 persons) and Yámani (74 persons) communities in the southern part of the country, as well as the Rapa Nui community on Easter Island, through the establishment of indigenous affairs offices, supervised by CONADI, which were responsible for coordinating, in the field, the State's activities for the benefit of those communities. Since 1999, the first two had been benefiting from a development plan comprising agrarian reform, a cultural activity programme and a special economic development programme. For its part, the Rapa Nui community was benefiting from a linguistic project which had made it possible to develop a Rapa Nui alphabet and compile the first Rapa Nui-Spanish dictionary. A bilingual cross-cultural school was operating on Easter Island and 80 per cent of the Rapa Nui students studying on the mainland were receiving education grants. One hundred and twenty Rapa Nui families were currently benefiting from a four-year programme for the development of fruit and market garden production. One thousand five hundred hectares of national forest land had already been returned to 280 families on the Island as part of a programme that would be continued in the year 2000.

7. In order to give full effect to article 2 of the Convention, the Chilean Government had established the National Indigenous Development Corporation (CONADI), a public body specially assigned to promote, coordinate and implement governmental activities in furtherance of the economic, social and cultural development of the indigenous communities and their members and to promote participation by those communities in national life. That body's National Council consisted of eight representatives elected by the indigenous communities and more than 50 per cent of CONADI's staff were indigenous. CONADI's achievements in 1998 and 1999 included a national specialized legal aid plan, a national programme to stimulate public awareness of indigenous problems, an increase in the financial resources of the Indigenous Lands and Waters Fund, the implementation of 22 experimental bilingual cross-cultural teaching projects, a national programme to establish halls of residence for indigenous students, a programme for the provision of _in situ_ services by municipal councillors and a doubling of the number of education grants awarded to indigenous students between 1998 and 1999.

8. With regard to the international instruments promoting the interests of indigenous peoples, Chile had ratified the treaty establishing the Development Fund for the Indigenous Peoples of Latin America and the Caribbean. It had also proclaimed 24 June as the National Day for Indigenous Peoples and had set up a commission for the development of Easter Island.

9. At the constitutional level, the Chilean Congress was currently considering a reform bill under which the Chilean ethnic communities would be granted the status of indigenous peoples. A pact concerning respect for citizens had been concluded between the Government, representatives of the indigenous communities and various socio-cultural sectors in the country. Finally, an inter-ministerial development plan involving the ministries, funds and local authorities concerned had been formulated to improve the quality of life of the indigenous inhabitants and meet their most urgent needs.

10. With regard to the problem of intolerance and racial discrimination, he said that only one fifth of the Chileans harboured xenophobic prejudices, others having racist or negrophobic prejudices. However, Chilean society as a whole did not tolerate racist or xenophobic behaviour and, by virtue of the positive measures taken by the public authorities for the benefit of the indigenous communities, racial tolerance prevailed in regard to those population groups. In that connection, he mentioned an important ruling handed down in 1993 by the Chilean Supreme Court concerning a case of racial discrimination against a Korean immigrant who had been denied access to a health and recreation centre on the ground that she smelled bad. The Court held the view that the fact of preventing a person from entering any public place on grounds of race, gender, language, religion or any other ethnic, social or cultural condition constituted unequal treatment and discrimination in breach of human rights and the relevant international instruments which had the force of law in Chile (see para. 63 of the report). There were also various standards that guaranteed equality before the law and punished any discriminatory act or behaviour. Moreover, the Chilean Congress was currently considering a draft bill concerning racial and ethnic discrimination that made provision for a review of the Penal Code which, for the first time, would punish acts of discrimination, physical violence, psychological abuse or contemptuous behaviour on grounds of race, religion or ethnic origin. Other legal instruments, such as the Labour Code, the Consumer Protection Act and the Abusive Publicity Act, also condemned discrimination.

11. Although Chile was not the only country in which discriminatory or racist behaviour had been reported, in contrast to the others it had taken the measures needed to establish a society that was more tolerant and respectful of its diversity. Furthermore, the country had never had to deal with any cases of racial discrimination attributable to public officials in the discharge of their duty.

12. In conclusion, he emphasized that, on 5 August 1999, at the time of signature of the Pact concerning respect for citizens, the Chilean President had indicated that the country should do more to further cultural richness and diversity. In particular, greater involvement of cultural, educational and social institutions and the media would promote tolerance among all Chileans, regardless of their origin.

13. The CHAIRMAN regretted that the information that the delegation had just provided did not appear in the report, particularly since that information referred, inter alia, to measures adopted before the preparation of the report and contained numerous highly interesting statistical data.

14. Mr. VALENCIA RODRIGUES (Rapporteur for Chile) said that the Chilean delegation's oral statement constituted a useful supplement to the report under consideration and should be regarded as an integral part thereof.

15. Noting that the report recognized the existence of discrimination against indigenous minorities since the colonial era, as well as the persistence of prejudices, albeit disguised, against them, he nevertheless felt that it was a positive sign that, in recent years, the Chilean authorities had apparently recognized a problem that affected 8 per cent of the 15 million Chileans. Although it had to be admitted that the struggle for the identity, dignity and rights of the indigenous minorities had been long and arduous and the process had been impeded by incidents, which were still occurring, it was encouraging to learn that, according to a study carried out by the Department of Sociology of the University of Chile in 1996, 71 per cent of Chileans rejected discrimination (para. 18 of the report).

16. In his view, other highly positive steps included the establishment in 1993 of the National Indigenous Development Corporation (CONADI), of which a large proportion of the management and staff were indigenous, as well as the adoption in the same year of the Indigenous Act which provided, in particular, for the protection of indigenous lands and the establishment of an Indigenous Lands and Waters Fund, an Indigenous Development Fund and a judicial system that recognized the particularities of the indigenous communities (para. 32). The Chilean Government should continue to report to the Committee on the progress achieved and the difficulties encountered in the application of that Act and should endeavour to ensure that the indigenous populations participated effectively in the activities of CONADI.

17. He inquired whether the delegation could inform the Committee of the present status of the constitutional reform bill that had apparently been debated in the Parliament since 1991 and under which the tribes would be recognized as indigenous populations, thereby turning Chile into a multi-ethnic nation. He also wished to know whether it could provide clarifications concerning the position of the Chilean authorities on one of the most serious disputes in recent years, namely that between the Pehuenche communities of Quinquén and logging companies (para. 36).

18. While welcoming the fact that, by virtue of the establishment of an Indigenous Lands and Waters Fund, the indigenous inhabitants had been able to acquire ownership of thousands of hectares of land, he wished to know whether there was any truth to the allegation that land ownership conflicts still persisted.

19. With regard to the struggle against ethnic and racial stereotypes and discrimination against immigrants, the decision of the Chilean Supreme Court in the case of racial discrimination involving a Korean immigrant (para. 63 of the report) obviously constituted a major precedent. However, there seemed to be a need for the Chilean and Peruvian authorities to undertake a joint study

of the specific problem of Peruvian migrant workers whose situations differed depending on whether they worked on the border of Peru, in the Arica region or elsewhere, especially at Santiago (para. 68), in order to find an equitable solution and prevent Peruvian women, particularly those working in the Arica region, from being subjected to double discrimination.

20. Although pleased to learn that, through the Indigenous Act, Chile now had a specific article under which manifest and intentional discrimination against indigenous persons on grounds of their origin and culture was a punishable offence (para. 76), he drew the delegation's attention to the fact that article 4, paragraphs (a) and (b), of the Convention applied to all forms of discrimination and not solely to discrimination against indigenous persons. Chile should therefore amend its penal legislation in conformity with that article. With regard to the application of article 6, he welcomed the fact that legal judgements had been handed down in a case of racial discrimination and that the guilty party had been ordered to pay a large amount of money by way of compensation (para. 78) and he hoped that, in future, the State party would continue to inform the Committee of similar cases.

21. On the other hand, the information provided concerning the other ethnic and national groups living in Chile was, in his opinion, fairly brief. In fact, according to paragraphs 10 to 17 of the report, immigrants who had suffered from discrimination were now fully integrated in Chilean society but no mention had been made of the question of the probable discrimination against the population of African origin who had interbred with the Chilean population over the ages.

22. He also requested the delegation to express its point of view concerning various alleged violations of the rights of indigenous inhabitants. He mentioned, in particular, the case of Pedro Cayuqueo, a Mapuche leader, who had been arrested at Santiago on 9 May 1999 on his return from Geneva where he had participated in the work of the Commission on Human Rights, before which he had denounced the violations committed against the Mapuches in the provinces of Arauco and Malleco. Thirteen Mapuche leaders had also apparently been arrested on 6 May 1999 and the president of the Nancucheo Association at Lumaco had allegedly been imprisoned on 27 March 1999. Following those incidents, complaints had been filed against the Chilean authorities by Amnesty International and the European Parliament. The Committee would like to obtain details on that subject. He also wished to know whether the delegation could comment on the information received by the Committee concerning some neo-Nazi groups, especially the "Dignidad" colony, a German community established in 1971 which was apparently a hideout for former Nazis and neo-Nazis.

23. Mr. FERRERO COSTA welcomed the resumption of the dialogue with the State party and hoped that the next periodic report would be submitted on schedule. The report under consideration contained frank and clear information concerning the situation of the indigenous populations, but it seemed that full effect was not being given to the provisions of the Convention in some fields. For example, although the Constitution made general provision for equality of citizens before the law, it made no specific reference to the various forms of discrimination, particularly racial discrimination. In that regard, he deplored the fact that the secretariat had not distributed the core

document (HRI/CORE/1/Add.103), which certainly contained valuable information concerning the implementation of the various instruments to which the State was a party.

24. Moreover, the existence of various forms of racial discrimination in Chilean society was recognized (para. 17 of the report) and it had also been learnt (para. 18) that a study conducted in 1996 on intolerance and discrimination had shown that one fifth of the population harboured xenophobic prejudices. In that regard, the assimilation of racial discrimination to xenophobia might not be fully legitimate as discriminatory practices were not necessarily attributable to xenophobic ideology. The Chilean Government still had an obligation to work towards the progressive and radical elimination of all forms of racial discrimination. However, the report itself provided little information concerning measures taken to that effect with the exception of the adoption, in 1993, of the Indigenous Act which definitely constituted a step forward, particularly in the light of the provisions made for the restitution of land to the indigenous inhabitants or expansion of the area of the lands that they possessed. Although the oral information that the delegation had provided concerning the Indigenous Lands and Waters Fund and the Indigenous Development Fund was very valuable, he would like to have a more precise idea of the percentage of agricultural land that had been restored to the indigenous populations and the financial conditions under which those operations had taken place. He also wished to know whether the delegation could explain whether the "bilingual cross-cultural education system" mentioned in paragraph 32 (f) was a limited pilot project or a programme that covered the whole country.

25. With regard to the establishment of a judicial system that recognized the particularities of the indigenous communities (para. 32 (h)), he wished to know what exactly was meant by recognition of custom "as a means of proof" and whether that was a legal norm applicable specifically to the indigenous communities. The system of legal conciliation between the parties, as a procedure preceding or replacing the classic judicial proceedings, seemed to be very interesting.

26. Part III of the report, concerning new migratory flows, had also attracted his attention and he requested a clarification of paragraph 73 in which it was stated that relations between Chileans and migrant workers were "ambiguous". The special work permit rules for Peruvian citizens (para. 69) also seemed to be clearly discriminatory insofar as it had to be certified that there was no Chilean who was interested in or who could do the work in question. He inquired whether the delegation could comment on that subject. Finally, he would like to have additional explanations concerning the implementation of article 5 of the Convention and concerning the situation of the mestizos in the towns, as the report referred mainly to the situation of the indigenous inhabitants in rural areas.

27. Mr. van BOVEN endorsed the comments and questions of the preceding speakers and said that he was awaiting, in particular, explanations on the question of the "Dignidad" colony to which the country rapporteur had already referred. In fact, he wondered how the existence of that colony could be reconciled with article 4 (b) of the Convention. Moreover, with reference to paragraph 32 (c), he wished to know the extent to which the provisions of

article 13 of the Indigenous Act of 1993, under which indigenous lands enjoyed legal protection and could not be transferred, seized, encumbered or acquired through prescription, were systematically reflected in the strategies that the authorities were following in that connection. He also wished to know what role the National Indigenous Development Corporation (CONADI) had played in the transfer of lands to the indigenous communities and whether it was involved in the formulation of policies concerning those communities.

28. With reference to the new migratory flows (part III of the report), he wished to know what status was granted to Korean immigrants in regard to access to education and health and acquisition of Chilean citizenship and whether specific measures were applied to them. Paragraphs 63 and 64 of the report mentioned one of the first trials for racial discrimination in Chile, involving a Korean immigrant who had been denied access to a health and recreation centre. He found it surprising that the Supreme Court, when ruling that the fact of preventing a person from entering any public place on grounds of race, gender, language or religion constituted unequal treatment and discrimination, had based its decision on the provisions of the Charter of the United Nations, the International Covenant on Civil and Political Rights and the American Convention on Human Rights without referring to the International Convention on the Elimination of All Forms of Racial Discrimination. Did that imply that the Convention was underrated in Chile? It was also very surprising to learn that racial discrimination, although not explicitly designated as an offence in Chilean criminal law, was punishable under the international treaties in force in the country (para. 64 of the report), as article 4 of the Convention actually placed the States parties under an obligation to declare an offence punishable by law any act of discrimination based on colour or ethnic origin. In that regard, he wondered whether, for example, Chilean legislation prohibited the non-recruitment or dismissal of an employee on the basis of his ethnic origin. At all events, the State party seemed to need more complete anti-discriminatory legislation.

29. Finally, he wished to know whether the Chilean authorities intended to introduce human rights training in the programmes of police and military academies as they had done for law-enforcement agents, whether they were considering ratification, in the near future, of article 8, paragraph 6, of the Convention, which had been adopted by the States parties, and the extent to which the general public was familiar with the Convention. In particular, he wished to know whether the report under consideration and the Committee's concluding observations would be translated into the country's various languages and widely disseminated. In conclusion, he noted with satisfaction that Chile had made the declaration recognizing the Committee's competence, as provided for in article 14, paragraph 1, of the Convention.

30. Mr. WOLFRUM commended, in particular, the frank manner in which the State party had presented the historical background and the situation of the indigenous minorities. He hoped that other countries, which likewise had a dismal record in that regard, would adopt an equally lucid and objective approach. However, it might be wondered why, at the present time, a return to the old political discourse, which openly discriminated against the indigenous populations, was said to be only "very difficult" (para. 23 of the report) and not totally impossible.

31. The most important point was that the situation of the indigenous inhabitants had improved considerably in recent years by virtue of a combination of factors referred to in paragraph 22 of the report. Article 1 of the Indigenous Act, which stipulated that society and the State had a duty, through their institutions, to respect, protect and promote the development of the indigenous inhabitants, as well as their cultures, communities and lands, gave full effect to the Committee's General Recommendation XXIII (51) concerning those populations and their lands. With regard to the establishment of a bilingual cross-cultural education system (para. 32 (f)), he wished to know whether the authorities were also encouraging the non-indigenous population to learn the Mapuche language, as the Australian authorities had done in the case of the Maori language, for example.

32. Returning to a matter of concern raised by Mr. Ferrero Costa, namely the lack of constitutional provisions specifically prohibiting all forms of racial discrimination, he wished to know the reason for that shortcoming. In particular, he requested clarifications concerning the ranking of the international treaties ratified by Chile and whether their provisions had been incorporated in the domestic legal system. If, in fact, there were a direct link between Chilean domestic law and international human rights instruments, the absence of national legislation prohibiting discrimination might just be understandable. Failing such a link, however, the State party would not be respecting its obligations under the Convention. He also wished to know whether the authorities intended to introduce into the Constitution a reference to the multi-ethnic and multicultural nature of the country similar to that which appeared in the Indigenous Act.

33. With regard to his main concern, namely the effective application of the Indigenous Act, it seemed that, in some disputes between multinational corporations and indigenous communities or some of their members to which reference had already been made, the Government had not reacted in an appropriate manner and he wondered about the extent to which that Act had effectively made it possible to modify the land ownership system that had been inherited from the past. He too was awaiting the delegation's explanations concerning the "Dignidad" colony.

34. In spite of those reservations, he felt that the positive aspects clearly outweighed the negative aspects and that the Indigenous Act and the policy that the Chilean Government was currently pursuing were highly encouraging. He hoped that further progress would be noted during the consideration of the State party's next report.

35. The CHAIRMAN pointed out that the State party's argument to the effect that there were no Indians, but only Chileans, was not necessarily open to criticism provided that it meant that the indigenous populations had the same rights as Chileans. He wished to know whether the languages spoken by those populations had a written form.

36. Mr. de GOUTTES said that the report gave a frank account of the situation of the indigenous populations in Chile and of the problems of racial discrimination with which they were still sometimes faced. The most notable of the numerous positive and commendable steps that had been taken lay in the Indigenous Act which sought to promote the economic and cultural development

of the indigenous populations and their members and, in particular, to facilitate their access to land ownership. He welcomed the decision taken by the State party to make the declaration provided for in article 14 of the Convention but wished to add some questions to those that had already been raised.

37. First of all, paragraph 20 of the report noted a growing tendency to substitute Spanish family names for Mapuche patronymics. Bearing in mind the recent measures taken to improve the situation of the indigenous populations, he wished to know whether that phenomenon, which bore witness to an identity crisis, was on the wane. In paragraph 32 (h), it was further stated that the Indigenous Act had established a judicial system that duly took into account the particularities of the indigenous communities through a "more streamlined and rapid" procedure. He wished to know whether the delegation could explain the nature of those special rules, which seemed to be an example of the positive discrimination referred to in article 1, paragraph 4, of the Convention. Concerning paragraph 64, as Mr. van Boven had already pointed out, in the State party racial discrimination was punishable directly under the terms of the international treaties in force. In his view, that statement was surprising since, although a treaty could actually define and criminalize an offence, it could not determine the punishment and the penalties that it entailed, which fell within the sole jurisdiction of domestic law. With regard to equal access to employment, he shared the concerns expressed by Mr. Ferrero Costa at the potentially discriminatory nature of the special rules applicable in Chile to the work permits granted to Peruvian citizens, to which reference was made in paragraph 69 of the report. It was also stated in the report (para. 76) that the Indigenous Act designated manifest and intentional discrimination against indigenous persons on the grounds of their origin or culture as a criminal offence. Although that was an important provision, it might be limited in two respects. Firstly, the offence of racial discrimination was punishable only by a fine, albeit of a large amount, but entailed no penalty of imprisonment. That seemed to indicate that the offence of racial discrimination ranked low in the scale of Chilean criminal offences. Secondly, the report did not say whether the criminal law also punished racial discrimination against non-indigenous persons such as foreign communities, for example.

38. Finally, he was aware of a report issued by the Corporación de promoción y defensa de los derechos del pueblo (CODEPU) and the International Federation of Human Rights (FIDH) which noted the persistence of acts of police brutality and infringements of the freedom of movement of persons belonging to indigenous communities, particularly Mapuches. He hoped that the delegation would let the Committee hear its comments on those allegations. He also wished to know what measures had been taken, or were to be taken, by the Government to develop human rights education, tolerance and inter-ethnic understanding among the police and, more generally, among all the law-enforcement agents in Chile.

39. Mr. BANTON, referring to the case of racial discrimination mentioned in paragraph 63, inquired whether a licence was needed to operate the type of establishment implicated therein. Since the Supreme Court had handed down a clear ruling in that case, could it not be stipulated that the operators of such establishments who committed acts of discrimination would incur the loss

of their licence? That penalty could also be made applicable to all establishments the operation of which required a licence (hotels, restaurants, etc.). Likewise, in order to prevent tenants from being harassed by neighbours for racially-motivated reasons, it could be stipulated that such acts constituted a breach of the rent contract for which the culprits could be evicted. In general, the State party seemed to place excessive reliance on the Penal Code to prevent racial discrimination and was not taking sufficient advantage of the possibilities for action offered by administrative or civil law. Finally, with regard to the concept of intentional discrimination referred to in paragraph 76, it should be noted that, according to article 1, paragraph 1 of the Convention, racial discrimination meant any act that was discriminatory not only in its purpose but also in its effects. He hoped to hear the delegation's viewpoint on that subject.

40. Mr. YUTZIS shared the generally positive feelings expressed by the experts concerning the quality and the relevance of Chile's report and of the further information that had been provided by the delegation. By way of reservation, he wished to highlight some matters of concern and add a personal comment. Firstly, he wondered about the exact status of the indigenous populations under the Constitution and would like the Chilean delegation to provide more explanations on that subject. His second question concerned the application of article 4 of the Convention. In his statement, a representative of Chile had referred to a planned reform of the Penal Code with a view to preventing certain forms of discrimination more effectively, through publicity or in publications, etc. He wished to know the extent to which that would target individuals or bodies corporate. In particular, what was Chile's position in regard to political parties or organizations of a racist nature. His third and main concern related to article 5 of the Convention and the exercise of economic and social rights. In fact, the Constitution did not seem to recognize the right to health, the right to education or the right to work but rather the right of choice in regard to health, education or work. Since paragraph 71 of the report indicated that the integration of migrant Peruvian workers in Chile appeared to depend on the labour market situation, there was reason to wonder about the protection that was effectively enjoyed by the groups that were most vulnerable in that regard. That complex question was also directly related to the one raised by Mr. Ferrero Costa concerning the situation of the indigenous inhabitants in urban areas where the most acute problems of marginalization and exclusion were encountered.

41. Finally, on the same subject of the situation of migrant workers in Chile, the country rapporteur had mentioned some problems in the region of Arica. He wished to know the present state of affairs and suggested that there might be a need to undertake a review of the Constitution in order to prevent civilians from being prosecuted in the military courts in future.

42. Mr. Diaconu took the Chair.

43. Mr. GARVALOV said that, according to a publication entitled The Indigenous World, 1998-1999 which was issued by the International Working Group for International Affairs, since the beginning of 1999 there had been open conflict between the Chilean authorities, private companies and the Mapuches. As that information contradicted the statements made in the report,

it would be useful to hear the delegation's comments on that subject. He regretted that the information concerning the application of articles 3, 4 and 5 of the Convention had been so meagre. The Committee would like to know more about the legislation prohibiting organizations that professed and practised a racist ideology, as well as the detailed provisions of Chilean legislation that gave effect to article 4. With regard to recognition of the contribution that the indigenous populations were making to cultural diversity, he thought that the statements by the two Presidents of the Republic of Chile, to which reference was made in paragraph 23 of the report, were insufficient since account should also be taken of the viewpoints of public opinion, non-governmental organizations and institutions. Finally, he had been rather puzzled to read in paragraph 24 that, during the 1992 census, persons over the age of 14 had been asked to "assign themselves" by choosing between the Mapuche, Aymara and Rapa Nui cultures. He wondered whether those persons had actually been forced to define their identity in one way or another.

The meeting rose at 6.05 p.m.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh to fourteenth periodic reports of Chile (continued) (CERD/C/337/Add.2; HRI/CORE/1/Add.103)

1. At the invitation of the Chairman, the members of the delegation of Chile resumed their places at the Committee table.

2. Mr. SHERIFIS said that he was impressed by the quality of the report of Chile and by the delegation's response to the Committee's earlier questions and comments. It was gratifying that the Government had made the declaration under article 14 of the Convention, as suggested by the Committee, and he hoped that it might likewise accept the amendments to article 8, paragraph 6. He also urged the authorities to ensure the widest possible dissemination of information about the Convention, the work of the Committee and the latter's conclusions and recommendations.

3. He drew attention to the Committee's General Recommendation XIII on the training of law enforcement officials and General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention. With regard to the latter, he wondered whether such an institution existed in Chile and, if not, invited the Government to consider establishing one.

4. He would like to have more details about the extent to which the members of indigenous communities took part in the work of parliament, the civil service and public offices and institutions in general. He particularly welcomed the Government's exemplary initiatives, noted in paragraph 16 of the report, in hosting meetings of United Nations human rights bodies. The information provided in paragraph 18, however, although refreshingly frank like the rest of the report, contained a misuse of terminology. Prejudice and discrimination against Indians was not xenophobia; the Indians were indigenous inhabitants, not foreigners. The use of that term by a university department was a striking blunder.

5. Mr. SHAHI said that he, too, appreciated the frank, objective report, whose candour was typified by paragraph 4 relating to Chile's historical background. The report reflected the Government's moral courage and augured well for the Chilean people's prospects. He was particularly struck by the contents of paragraph 13, relating to the Indigenous Development Corporation (CONADI) set up pursuant to Act No. 19,253 of 1993, and by paragraph 18, mentioned by Mr. Sherifis, which in any case was evidence of the concern to educate Chilean society with a view to eliminating intolerance and discrimination and to fostering protection of the rights of all population sectors.

6. With regard to article 2 of the Convention, he applauded the adoption of the Indigenous Act, described in paragraphs 30 to 32 and again in paragraph 75 of the report. But the description in paragraph 77 of legal action in indigenous disputes and the account in paragraph 78 of proceedings instituted

by a Korean woman on the grounds of racial discrimination failed to show whether the Convention, and article 5 (f) in particular, had actually been invoked by the higher courts; nor was there any information about possible conciliation and settlement measures as an alternative to action at law. He hoped, therefore, that the next periodic report would shed more light on how domestic legislative measures and judicial procedures reflected article 4 of the Convention, in particular.

7. The CHAIRMAN, speaking as a member of the Committee, said that he too admired the frankness of the reporting - something not encountered in the case of all States parties - and the way in which problems were being openly faced. Impressed as he was by Chile's admission of past wrongs, especially against the indigenous population, he asked whether Chile might consider taking the next step and offer an apology and provide for restitution or compensation for the land and other property taken from the indigenous population. Although such action would clearly take time, by taking such steps Chile could become a pioneering nation in Latin America and enhance its early democratic traditions. Replying to an observation by Mr. FERRERO COSTA, he agreed that, in the case of many countries, the question of compensation could involve not only current Governments but former colonial and other occupying Powers, although experience had shown that compensation was seldom forthcoming from such Powers.

8. Mr. SALINAS (Chile) said that his delegation was grateful for the Committee members' questions and comments and appreciated the praise bestowed on the report, especially with regard to the situation of indigenous peoples and the Government's efforts to restore a healthy balance of tolerance in a nation of considerable cultural diversity.

9. Ms. BERTONI (Chile), speaking on land disputes involving the Mapuche people which had come before the courts, said that the Committee would be provided with a list of all such cases, most of them in the Araucanía region. She asked for the names of the individuals members had mentioned, so that she could find out the full details of their cases. She did, however, have some information for the Committee. In only one of the six cases brought to trial had six Mapuches been sentenced to short terms of imprisonment as a result of events in Araucanía, and they had now been released under surveillance. No Mapuche was currently being held in detention following the events of the previous year.

10. Members had mentioned an individual who had been arrested on 9 May 1999 on his return from abroad. The individual in question had been arrested by authority of a court order dating from 5 May in connection with a case of land usurpation. His arrest was nothing to do with the fact that he had attended an international meeting on the rights of the Mapuche people. His case has been tried, and he had been provisionally released. In another case mentioned by members, the individual concerned had been arrested for theft and criminal damage on 20 March 1999 by the Carabineros (paramilitary police). However, he had been released for lack of evidence on 22 March and his case had thus never come to court.

11. Turning to the implementation of the international human rights treaties to which Chile was a party, she said that, as was stated in the core document

(paras. 68 to 70), on completion of the necessary procedure an international treaty came into force as a law of Chile and could be invoked before the courts and other authorities as if it were domestic legislation. International human rights treaties, especially the American Convention on Human Rights and the International Covenant on Civil and Political Rights, were increasingly cited in cases coming before the higher courts (the Supreme Court of Justice and the appeal courts). For instance, in the much publicized racial discrimination case won by a Korean woman immigrant in 1993 (CERD/C/337/Add.2, para. 63), the Supreme Court had clearly condemned racial discrimination, although it had cited the International Covenant on Civil and Political Rights and the American Convention on Human Rights, rather than the Convention. In that case, those instruments had been treated as though they were the domestic legislation of Chile.

12. Members had pointed out, correctly, that infringements of the Convention, when it was directly applied in Chilean law, were liable to civil, not criminal penalties. Further legislative measures would be needed to include offences infringing the Convention in the Penal Code. In the case of the Korean immigrant mentioned above, however, a civil penalty had been appropriate, since the defendant, the owner of a health club, had been prosecuted under consumer protection laws for excluding the plaintiff from the club. The original decision of the local court had been confirmed by both the appeal court and the Supreme Court. As to the publicity given to the judgement, the case had attracted considerable media and public interest and had become an exemplary case of conviction for racial discrimination which would be cited frequently in the future. The higher courts had also considerably increased the fine payable by the defendant.

13. International human rights treaties thus had the same authority as the Constitution, but there were still questions of jurisprudence and doctrine to be settled. The issue was a very delicate one because of the many human rights violations which had taken place under the former military regime. However, the attitude taken by the courts had become more positive in recent years and international human rights treaties were beginning to be applied in court judgements.

14. The National Commission on Truth and Reconciliation had investigated the serious human rights violations which had taken place during the military regime of 1973-1990. The National Corporation for Compensation and Reconciliation was responsible for implementing its recommendations, and the Corporation had published a document entitled "Constitution, treaties and essential rights", which brought together all the international human rights treaties which had been incorporated into Chile's own legislation: the document had been distributed to public authorities and the judiciary. In March 1999, a special edition of the Official Gazette (Diario Oficial) had been published, containing all the human rights treaties and instruments which were currently in force in Chile, which was intended for civil servants, judges and the general public. The document was considered a major step forward in the dissemination of human rights treaties. She would pass on to the relevant authorities, including CONADI, the Committee's suggestion that the Convention might be translated into indigenous languages.

15. Regarding steps taken by the Government to publicize its fourteenth periodic report in Chile, she said that the Office of the Human Rights Adviser of the Ministry of Foreign Affairs had distributed the report to non-governmental organizations (NGOs) concerned with human rights and the rights of indigenous peoples, as well as bodies concerned with discrimination, including the Chilean Human Rights Commission and the Christian Churches' Social Assistance Foundation. At a meeting attended by some of the NGOs, the text of the Convention and the fourteenth periodic report had been distributed and the Committee's procedure for examining the report had been explained. The Government would pass on the Committee's comments to the NGOs.

16. Mr. SALINAS (Chile), speaking on the subject of reforms to the Constitution, said that the Government had been trying since 1991 to change the Constitution in order to improve the status of indigenous peoples. The proposed reforms were still before the National Congress, together with the Government's proposal for ratification of the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169), but, on the initiative of the President of the Republic, the process of adoption was now to be expedited.

17. Turning to article 4 of the Convention, he said that there was no constitutional provision specifically prohibiting racial discrimination. However, the part of the Constitution which dealt with the right to freedom of association declared unconstitutional all groups and organizations which sought to establish a totalitarian regime or which used or incited others to use violence as a means of political action. It was for the Constitutional Court to rule that they were unconstitutional. The National Security Act covered crimes against public order, including the propagation of doctrines, systems or methods which advocated crime or violence in any form in order to bring about political, economic or social change. Under the Law against Abuse of Publicity, it was an offence to make broadcasts or issue publications, in any medium, which incited people to hatred, hostility or denigration of persons or communities on the grounds of their race or religion.

18. A bill on racial and ethnic discrimination was under consideration. It proposed a new article of the Penal Code, which would define the crime of discrimination on the grounds of race, religion or national or ethnic origin. It was also planned to change article 8 of the Indigenous Act to increase the penalties for acts of discrimination against indigenous people. It was further intended to change the Law against Abuse of Publicity to cover publications or broadcasts which incited people to hatred, hostility or denigration on the grounds of national or ethnic origin.

19. Turning to the Indigenous Act, he said that, in general, custom (costumbre) was not accepted as having the force of law unless the law so stated. However, the Indigenous Act stated specifically that customs should have the force of law provided that they were compatible with the Constitution. In criminal cases, customs could be cited as an excusing or attenuating circumstance. In the Indigenous Act, customs could not, strictly speaking, be adduced as formal evidence, although they could be taken into account in all types of legally recognized testimony, particularly the expert reports of CONADI. They were accepted as a means of conciliation for the resolution of land disputes.

20. A simplified procedure had been introduced to make it easier for indigenous people to gain access to justice and make court procedures more flexible in cases relating to the ownership, division, administration, exploitation and use of indigenous land and laws and contracts affecting it. Such cases were presided over by a judge from the commune where the disputed land was situated.

21. Turning to the question of Korean and Peruvian immigration, he said that immigrants from both those groups were governed by the same laws as all other immigrants. The influx of Korean immigrants had slowed considerably in recent years. The only case of racial discrimination which had been recorded was the one referred to by Ms. Bertoni and described in paragraph 63 of the report, and no complaints had been received from the Korean consular and diplomatic authorities regarding discrimination against Korean nationals. There were far more Peruvian immigrants: an estimated 60,000 Peruvians lived in Chile. In May 1999, 16,798 Peruvian citizens had been in possession of residence permits, which represented 73.7 per cent of all residence permits throughout the country. A large number of illegal Peruvian immigrants were also thought to be living in Chile, and the immigration authorities were trying to regularize their situation.

22. There was a special situation in the border region of Arica, as described in paragraph 72 of the report. Under an agreement between Chile and Peru, people could move freely within a limited area on either side of the border without a passport or visa, but merely with a "safe conduct" pass (salvoconducto) valid for seven days at a time. Peruvian immigrants thus regularly travelled back and forth across the border to work in Arica.

23. The labour laws applied to all migrant workers, whether they were working legally or illegally. Discrimination on grounds of race, colour, sex and trade union or political affiliation was prohibited. There were regulations stating that 85 per cent of an enterprise's workers should be Chilean citizens, but an exception was made in certain special cases.

24. Education in Chile was free and compulsory up to the eighth year of school. Public and private systems of education coexisted and the State granted subsidies to both municipal and private primary schools. The health care system also consisted of public and private sectors. The public health service was freely accessible to all people residing in Chilean territory, including both legal and illegal immigrants.

25. The Government's interest in providing human rights training for law enforcement officials was reflected in the introduction of human rights courses into the curricula of the Carabineros and the Police Department training academies and also for prison staff (Gendarmería). The teachers on such courses were often distinguished human rights specialists with extensive experience. More time was needed to evaluate the effect of human rights training on staff conduct; however, the process of evaluation had begun and would continue in the future.

26. He confirmed his Government's willingness to continue to provide the resources it had pledged to finance the Committee's activities, despite the

current economic crisis in the country; his delegation would strongly urge its authorities to consider meeting the Committee's concerns about article 8, paragraph 6 through a specific contribution in future.

27. The CHAIRMAN specified that Chile was being requested merely to ratify the General Assembly's amendment to article 8 of the Convention to the effect that the Committee's expenses would be covered by the regular budget.

28. Mr. SALINAS (Chile), assured the Committee of Chile's commitment to its financial obligations. Clarifying the statement in paragraph 23 of the report, he stressed that it was not just a matter of good intentions but that there was a growing trend towards ethnic tolerance in Chile, demonstrated by the recent signing of the Pact on Civic Respect by representatives of the Government, indigenous people and social and cultural sectors. Since Chile had a presidential form of government, statements made by the President were of great juridical and political importance, and the executive moreover had the power to issue decrees implementing policy decisions. Discriminatory policy decisions had been made in the recent past during the period of authoritarian military rule, but the Chilean authorities now intended to move further along the path towards respect and tolerance of the country's ethnic diversity.

29. It was true that the report did not contain sufficent detail regarding article 5 of the Convention, although some information, for example on measures taken to implement the Indigenous Act, had been provided in the previous day's oral presentation. He assured the Committee that more information would be provided in that regard; however, it should be noted that in Chile there were no norms or practices preventing people from enjoying the rights laid down in article 5. Equality before the law was a fundamental principle protected by the constitutional remedies of protection and habeas corpus.

30. Ms. ARAVENA (Chile) said that it was clear that the country's history of discrimination could not be eradicated overnight, but would require firm and long-term political will. She was particularly interested in the suggestion that indigenous participation in CONADI should be increased. At the most recent regular session of CONADI, a text had been prepared and sent for examination and approval by the Comptroller General of the Republic on an amendment to the system for electing indigenous councillors, which would serve as an indigenous electoral model for the whole country.

31. Regarding the question of indigenous lands, there had been widespread discrimination against indigenous people during the period of military dictatorship, when the agrarian reforms introduced by Presidents Frey and Allende had not been sustained. Indigenous lands had been at the mercy of logging companies, one example being the dispute between Mininco, a logging company, and the Mapuche people. As mentioned in the report, the restoration of democracy in 1990 had led to a change in State policy, of which the promulgation of the Indigenous Act was a clear example. Expropriation of land by the Chilean State was prohibited by the Constitution and therefore it was difficult to find a rapid solution to the long-standing problem of indigenous land rights. However, those rights were increasingly being recognized by the law; for example, indigenous land could not be transferred to any individual

unless he or she were also a member of an indigenous community. Progress was therefore being made in implementing the provisions of articles 2 and 5 of th Convention and the State had undertaken to see that land was exploited in a proper manner. CONADI, in coordination with the Ministry of National Resources, was the body responsible for implementing such measures. To date, a total of 82,506 hectares of land, with a value of $628 million, had been transferred to indigenous communities.

32. There were three main mechanisms for resolving di putes over the purchase of land. The first was provided for under article 20 (b) of the Indigenous Act. For example, the Mapuche people in Malleco and Arauco had made a claim to CONADI for restoration of their land, from which they had bee displaced when the military dictatorship had sold the land to a logging company. CONADI had studied that case and others and had established a procedure for restoring land to the Mapuche people; however, it took time for a decision to be made in such cases. In many other cases, the companies concerned refused to sell the land; a negotiation process had therefore been set up which had resulted in the purchase of some tracts of land by the State for restoration to indigenous people. To date, claims for 38,000 more hectares had been received, affecting 10,000 families. Those claims would be dealt with between 1999 and 2002.

33. The second mechanism related to the restoration of State-owned property through CONADI. To date, over 47,000 hectares of land had been restored to indigenous people and almost 55,000 more hectares were in the process of bei restored. Other areas of public land were being converted for use as ceremonial sites. The third mechanism related to subsidies for new applications for acquisition rather than restoration of land. Such applications were made through public bids which had not yet been quantified although resources would continue to be set aside for them. In the current year, 3,000 million pesos would be granted to 400,000 families for land acquisition.

34. Land was transferred to indigenous people free of charge. No definite figures were yet available for the total percentage of agricultural land transferred to indigenous people, but figures would be provided in the country's next report.

35. On the question of indigenous education and culture, it was through general education and intercultural education that in the long run Chile wou overcome any racial prejudices against indigenous citizens and foreigners. The Government had taken many steps to implement the Convention in that respect. Scholarships sponsored by CONADI and the Ministry of Education had improved access to education for about 48,000 indigenous young people, at a cost of over $15 million. For the first time, pilot programmes for bilingua intercultural education had been set up; they would be assessed at the end of 1999 and similar programmes would be extended to other schools in the country. The Government had also conducted eight linguistic studies on vernacular languages and methods of teaching them, and for three of those languages - Mapuche, Aymara and Rapa Nui, which until 1995 had had no offici system of writing - it had developed alphabets and grammars and trained 40 professors and student teachers. A comprehensive study had been done in 1995 on a revision of the school curriculum to include interculturalism a

bilingualism, bearing in mind the changes needed in rural education. Pilot projects had been designed for the teaching of indigenous languages as mother tongues. Since 1998, educational reforms, teaching methods and syllabuses appropriate to an urban setting had been developed; vernacular languages were being learned in the cities as second languages by both indigenous and non-indigenous pupils, and two pilot projects had been set up in the Santiago area. For 30 years a nationwide reform of general education had also been under way. As Chile entered the new millenium, the focus was on introducing the interculturalism and bilingualism that would equip it to eradicate any western ethnocentrism in its education and instil a greater respect for the indigenous cultures of the country, thereby creating a positive and tolerant attitude towards differences.

36. The Office of Indigenous Affairs in Santiago, in particular, was working for the advancement of the indigenous population in urban areas. As a result of its work, the culture and identity of urban indigenous people had been dignified and their economic advancement and the protection of their rights had been promoted, as had the restoration of their heritage.

37. The fact that many non-indigenous persons had falsely claimed to be indigenous in order to qualify for scholarships and benefits set aside for indigenous citizens, and that over 6,000 indigenous persons had applied for official recognition as such, showed that the policy of enhancing the image of the indigenous person was working.

38. Unlike other less geographically isolated Latin American countries, Chile had never seen a great influx of persons of African origin. The historical evidence was that about 3,000 Africans had come to Chile in colonial times, but a large percentage of them had died because of the climate and forced labour, or had emigrated to neighbouring countries, leaving only a small number in Chile, who had been absorbed into the Spanish population. As a result, there was currently no population of African origin in Chile going back to the slave trade, which explained why the report had been silent on the question. On the other hand, in May 1999, 14 visas had been granted to Africans from South Africa, Angola, Ghana, Kenya, Ethiopia and Nigeria, and there had been no indication of any incident of discrimination against them. In general, Chile rejected only between 2 and 3 per cent of requests for residence visas.

39. Mr. Yutzis, Vice-Chairman, took the Chair.

40. Mr. GARVALOV, referring to the delegation's statement that if any racist organization was discovered the case would be brought before the Constitutional Court, which would then decide on whether or not it should be banned, said that he wished to clarify the Committee's position on article 4 of the Convention, as set out particularly in General Recommendation VII and later in General Recommendation XV, from which he read out paragraphs 2 and 6. The provisions of article 4, especially article 4 (b), were mandatory; States should act against racist organizations at the earliest possible moment, before any actual incidents of racial discrimination or violence occurred.

41. Mr. Aboul-Nasr resumed the Chair.

42. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) expressed appreciation for the delegation's oral introduction and full answers to questions. Chile was to be commended for recognizing in its report that there was a problem of racial discrimination in the country, for having made the declaration under article 14, and for having incorporated the Convention into its domestic law. The Indigenous Act adopted in 1993 and the establishment of CONADI, which included indigenous representatives, were especially praiseworthy. The Government had clearly been making a serious effort on the crucial issue of restitution of indigenous lands, and the Committee would look forward to learning of further progress made, especially in view of the reported conciliation procedures, which were likely to be less lengthy than the legal system developed to deal with disputed claims. The Government had clearly devoted much attention also to promoting indigenous education. Constitutional recognition of the country's various ethnic groups had made great strides with the proposed constitutional reform bill pending in Congress. The Committee was also pleased that the Government intended to ratify International Labour Organization (ILO) Convention No. 169.

43. Due compliance was expected, however, with article 4 of the Convention, and both the Constitution and the Penal Code should be revised to include a prohibition of racial discrimination. The prohibition of totalitarian organizations in both the Constitution and the National Security Act should also be brought into line with article 4.

44. He appreciated the information given regarding court cases brought against Mapuches over land issues, especially in Araucanía, and had been pleased to learn that none were now in detention. He himself would make the information he had received on the question available to the delegation.

45. The CHAIRMAN, speaking as a member of the Committee, said that the two important questions he had raised, regarding an apology for past wrongs and regarding compensation for land, could be discussed in the next report.

46. Mr. WOLFRUM concurred that both issues were extremely important. It was a matter of concern to him that land seized from indigenous people by private industry had to be bought back by the Government and not simply expropriated and returned to the original, rightful owners, and he would appreciate an explanation. The Government's welcome change of attitude towards its indigenous population - outstanding in comparison to other countries - ought to be reflected in the Constitution.

47. Mr. YUTZIS asked for clarification in the next report as to whether the Constitution indeed stipulated that any crime against members of the military by a civilian was to be tried in a military court. The concern was timely because trials of Mapuches for such offences were currently being held in Chile and would soon reach the sentencing stage.

48. Mr. SALINAS (Chile) assured the Committee that all remaining questions would be answered in the next report of Chile.

49. The CHAIRMAN, thanking the delegation of Chile, said that the Committee looked forward to continuing its dialogue with the State party.

The meeting rose at 12.15 p.m.